is in classifying properly the public and private functions of a municipal corporation. See *Esberg Cigar Co.* v. *City of Portland*, 34 Or. 282, 288, 55 Pac. 961, 962. The court in the principal case, assuming that a city generally is responsible for unsafe conditions in parks, reasons that the statute, in authorizing a sale, dissolved the public trust, and thereafter the city had the liabilities of a private landowner. It is submitted that the liability of a city depends, not upon the purposes for which land is acquired, but upon its actual use. Thus where land is purchased for future public use, before it is devoted to that purpose, the city has only the private owner's liability. *Birch* v. *City of New York*, 190 N. Y. 397, 83 N. E. 51; *Barthold* v. *City of Philadelphia*, 154 Pa. St. 109. So if the land in the principal case was never used for a park, the city never got beyond the private landowner's responsibility, and the reasoning is inapplicable. If the land was used for park purposes, and continued to be so used to the time of the injury in question, it is difficult to see how a statute giving a power of sale would change the extent of liability.

MUNICIPAL CORPORATIONS — POLICE POWER AND REGULATIONS — ACTS PROHIBITED BY BOTH STATUTE AND ORDINANCE. — By its charter a city was given authority to make ordinances to regulate the sale of food. An ordinance was passed imposing fines for the sale of adulterated food. A state law was then passed, imposing a larger penalty for the same act. Subsequently a law reaffirmed the city's original power. *Held*, that the city can recover a fine under the ordinance for the sale of adulterated food. *City of Chicago* v. *Union Ice Cream Mfg. Co.*, 96 N. E. 872 (Ill.).

Originally municipal ordinances did not extend to criminal matters, and the penalty for violation was recoverable in an action of debt. See 2 DILLON, MUNICIPAL CORPORATIONS, 5 ed., §§ 634, 635. A municipality may now if authorized further penalize what is already a criminal act. *People* v. *Hanrahan*, 75 Mich. 611, 42 N. W. 1124. As to its power to do so, when not express, decisions are in chaotic conflict. *Matter of Sic*, 73 Cal. 142, 14 Pac. 405; *City of Seattle* v. *MacDonald*, 47 Wash. 298, 91 Pac. 952. The customary test of a municipal ordinance is reasonable necessity. *State, Cape May, etc. R. Co.* v. *City of Cape May*, 59 N. J. L. 404, 36 Atl. 696. If the state has already taken care of a matter, this may well raise a presumption against the reasonableness of the city's act. *Cf.* 2 DILLON, MUNICIPAL CORPORATIONS, 5 ed., §§ 632, 633; 2 MCQUILLIN, MUNICIPAL CORPORATIONS, §§ 876, 877. When the proceeding is in the form of a complaint in the name of the city, and not an action of debt, it still is not a criminal action and the constitutional guaranties as to criminal trials do not apply. *State* v. *Muir*, 164 Mo. 610, 65 S. W. 285; *Williams* v. *City Council of Augusta*, 4 Ga. 509. *Contra*, *State ex rel. Hamilton* v. *Municipal Court of Milwaukee*, 89 Wis. 358, 61 N. W. 1100. But if the action is in the name of the state and the penalty is imposed for the purpose of punishment, it is criminal. *State* v. *Kernan*, 57 Conn. 286. See 15 HARV. L. REV. 660. The ordinance must of course never be inconsistent with the state law. *Horn* v. *Chicago & N. W. Ry. Co.*, 38 Wis. 463. Imposing a smaller penalty does not make it inconsistent. *City of New Orleans* v. *Collins*, 52 La. Ann. 973, 27 So. 532.

PUBLIC SERVICE COMPANIES — RIGHTS AND DUTIES — TELEPHONE CONNECTIONS WITH OTHER LINES. — The plaintiff telephone company sued to compel the defendant telephone company to make an electrical connection between the two systems. By an operating agreement, the defendant company had made such connection with another telephone company. *Held*, that the bill should be dismissed. *Home Tel. Co.* v. *People's Tel. & Tel. Co.*, 141 S. W. 845 (Tenn.).

For a discussion of the principles involved, see 23 HARV. L. REV. 54.